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2025-CV-0115019
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IN THE DISTRICT COURT FOR THE SEVENTH JUDICIAL DISTRICT
STATE OF WYOMING, COUNTY OF NATRONA

DANIELLE JOHNSON; GIOVANNINA ANTHONY, M.D.; RENE R. HINKLE, M.D.; CHELSEA'S FUND; JTP PROFESSIONAL SERVICE CORPORATION, d/b/a Just The Pill; CIRCLE OF HOPE HEALTH CARE SERVICES, INC., d/b/a Wellspring Health Access;	)	
Plaintiffs,	)	
vs.	)	
STATE OF WYOMING; MARK GORDON, Governor of Wyoming; KEITH G. KAUTZ, Attorney General for the State of Wyoming; JOHN HARLIN, Sheriff Natrona County, Wyoming; and SHANE CHANEY, Chief of Police, City of Casper, Wyoming; STATE OF WYOMING BOARD OF MEDICINE; KEVIN BOHNEBLUST, Executive Director of the Wyoming Board of Medicine; STATE OF WYOMING BOARD OF NURSING; RACHAEL FILBRANDT, Executive Director of the Wyoming Board of Nursing; STATE OF WYOMING BOARD OF PHARMACY; and MATT MARTINEAU, Executive Director of the Wyoming Board of Pharmacy,	)	**Civil Action No. 2025-CV-0115019**
Defendants.	)	

ORDER ON PARTIES' CROSS MOTIONS FOR SUMMARY JUDGMENT

THIS MATTER is before the Court upon the parties' cross motions for summary judgment. Plaintiffs Danielle Johnson; Giovannina Anthony, MD; Rene R. Hinkle, MD; Chelsea's Fund; JTP Professional Service Corporation, d/b/a Just The Pill; and Circle of Hope Health Care Servies, Inc., d/b/a Wellspring Health Access ("Wellspring") (hereinafter collectively "Plaintiffs") filed their *Complaint for Declaratory and Injunctive Relief* on March 21, 2025 against Defendants State of Wyoming; Mark Gordon, Governor of Wyoming; Bridgete Hill, Attorney General for the State of Wyoming; (March 11, 2026 Keith Kautz entered his appearance as Attorney General); John Harlin, Sheriff Natrona County, Wyoming; Shane Chaney, Chief of Police, City of Casper, Wyoming; State of Wyoming Board of Medicine; Kevin Bohneblust, Executive Director of the Wyoming Board of Medicine; State of Wyoming Board of Nursing; Rachael Filbrandt, Executive Director of the Wyoming Board of Nursing; State of Wyoming Board of Pharmacy; and Matt Martineau, Executive Director of the Wyoming Board of Pharmacy (hereinafter collectively "State"). (The City of Casper and Natrona County appeared by counsel throughout the proceedings and aligned themselves with the State Defendants. The parties agreed those entities would remain subject to the litigation but would not file separate pleadings).

Plaintiffs Amended their *Complaint* on May 1, 2025. The Defendants' response and supporting materials were filed June 20, 2025. The parties' Motions for Summary Judgment and supporting materials were filed February 4, 2026, and their responses followed on February 24, 2026.

Arguments on Summary Judgment occurred on March 19, 2025. Marci C. Bramlet, Peter S. Modlin, and Bethany J. Saul all appeared on behalf of the Plaintiffs, with Mr. Modlin conducting argument. Donovan Burton and John Woykovsky appeared on behalf of the State, with Mr. Woykovsky conducting argument.

RELEVANT FACTS AND PROCEDURAL HISTORY

I. Background of Abortion Regulation

On January 2, 2022, the United States Supreme Court ruled, in broadest of terms, that "[t]he [Federal] Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion," *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 302 (2022), overruling its previous holdings in *Roe v. Wade*, 410 U.S. 113, 93 (1973). *Dobbs* did not create any brightline rules; rather, it left legal autonomy regarding abortion regulation to the individual states. *Id.* Nonetheless, its ruling set off a litany of litigation, in which Wyoming was not exempt.

The Wyoming Legislature initially[1] passed laws regarding abortion availability via enactment of W.S. §§ 35-6-120—35-6-138 ("the Life Act"). In short, the Life Act served as a blanket ban on procedural abortions except in certain circumstances, such as when the life or health of the mother called for termination of the pregnancy; in cases of sexual assault or incest; and instances of molar pregnancy or "lethal fetal anomaly." Wyo. Stat. Ann. §§ 35-6-123—124 (West 2026). Shortly thereafter, the legislature also passed W.S. § 35-6-139 ("the Medication Ban"). The Medication Ban largely prohibited the prescribing, dispensing, and using of drugs to cause a

[1]Enactment of the Life Act and Medication Ban occurred after Wyoming's "Trigger Law," W.S. § 35-6-102(b), was preliminary enjoined via order from Teton County District Court. Or. Grant. Mot. Prel. Inj., *Johnson v. State*, No. 2022-CV-18732 (9th Jud. Dist. Ct., Teton Cnty., Aug. 10, 2022).

A "Trigger Law" is "[a] statute that is unconstitutional and unenforceable when enacted but contains a provision deferring the law's effective date until the substantive provisions actually become constitutional." *Trigger Law*, Black Law's Dictionary (12 ed. 2024).

chemical abortion. Similar to the Life Act, the Medication Ban contained comparable exclusions, including circumstances when used as contraception before a determination of pregnancy can be made; treatment of miscarriage; treatment necessary for the preservation of a woman's life; and pregnancy as the result of incest or sexual assault. Wyo. Stat. Ann. § 35-6-139 (West 2026).

The provisions of the Life Act and the Medication Ban were challenged in Teton County District Court. The district court permanently enjoined enforcement of those laws at the summary judgment stage, deeming them unconstitutional pursuant to Article I, § 38 of the Wyoming Constitution. Sum. J. Ord. at 34, *Johnson v. State*, No. 2023-CV-18853 (9th Jud. Dist. Ct., Teton Cnty., Nov. 18, 2024). The appeal of that judgment resulted in the Wyoming Supreme Court's decision in *State v. Johnson*, 2026 WY 1 (Wyo. 2026)("*Johnson*"). While examined in greater detail throughout this order, *Johnson* upheld the district court's determination that the Life Act and the Medication Ban were unconstitutional, holding that:

> The State did not meet its burden of proving [the Life Act and the Medication Ban] are necessary to achieve a compelling government interest or are narrowly tailored to avoid unduly infringing on a woman's right to make her own health care decisions under Article 1, § 38 of the Wyoming Constitution.

Id. at ¶ 108.

While the Wyoming Supreme Court's decision in *Johnson* was pending, the legislature further enacted additional abortion-related laws. Those are the laws at issue in this matter and are outlined more extensively as follows:

II. House Bill 42/§§ 35-6-201—204 /"ASC LAW":[2]

House Bill ("HB") 42 ("ASC Law") went into effect on February 27, 2025. Pursuant to the ASC Law, all surgical abortion facilities[3] must be licensed as Ambulatory Surgical Centers ("ASC"). W.S. § 35-6-202 provides:

> (a) Each surgical abortion facility other than a hospital in Wyoming shall be licensed as an [ASC] in accordance with W.S. 35-2-901 through 35-2-914 and the rules of the department of health. Each surgical abortion facility performing surgical abortions shall have a separate license.
>
> (b) No surgical abortion facility shall provide surgical abortions to any pregnant woman without first being licensed as an [ASC].
>
> (c) Each surgical abortion facility shall comply with all rules of the department of health concerning the operation and regulation of [ASCs]. No license issued to a surgical abortion facility shall be transferable or assignable to any other person or facility.
>
> (d) Each licensed physician performing at least one (1) surgical abortion at a surgical abortion facility shall:
>
> i. Report each surgical abortion to the department of health and attest in the report the physician is licensed and in good standing with the state board of medicine;
>
> ii. Submit documentation in a form and frequency required by the department of health that demonstrates that the licensed physician has admitting privileges at a hospital located not more than ten (10) miles from the abortion facility where the licensed physician is performing or will perform surgical abortions.
>
> (e) Any person who violates this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000.00). Each calendar day in which a violation of this section occurs or continues is a separate offense.

[2] The laws are *summarized* here for relevance, clarity, and background. The laws are further quoted throughout this order when necessary.

[3] "Surgical abortion facility means any facility that provides a surgical abortion to a woman." Wyo. Stat. Ann. § 35-6-201(a)(x).

Material to this matter, such licensure requires surgical abortion facilities' compliance with a variety of stringent medical and structural conditions.[4]

The ASC Law also demands that physicians who practice within a surgical abortion facility in Wyoming obtain admitting privileges at a hospital within ten miles. Pursuant to W.S. § 35-6-203:

> (a) Any surgical abortion performed at a surgical abortion facility in the state shall only be performed by a physician licensed within the state of Wyoming.
>
> (b) Any person who performs a surgical abortion in the state in violation of subsection (a) of this section is guilty of a felony punishable by imprisonment for not less than one (1) year nor more than fourteen (14) years.
>
> (c) No person shall perform a surgical abortion at a surgical abortion facility in Wyoming who is not a licensed physician with admitting privileges at a hospital located not more than ten (10) miles from the abortion facility where the surgical abortion is performed.
>
> (d) Any person who violates subsection (c) of this section shall be guilty of a misdemeanor punishable by a fine of one thousand dollars ($1,000.00). For purposes of this subsection, each surgical abortion shall constitute a separate offense of subsection (c) of this section.

III. HB 64/ W.S. §§ 35-6-301—302 "Ultrasound Requirement"

HB 64 ("Ultrasound Requirement") took effect on March 5, 2025 and was enacted at W.S. §§ 35-6-301—302.[5] Under the Ultrasound Requirement, women seeking abortions must undergo

[4]Some of these requirements are itemized in Julie Burkhart's Declaration. They include, but are not limited to, 360 square feet of clear space in operating rooms; post-anesthesia recovery rooms; and staff clothing changerooms. Pls. Ex. 4 at ¶¶ 26—27.

[5]Prior to taking effect, Governor Gordon vetoed the Ultrasound Requirement on March 3, 2025. The legislature overrode the veto on March 5, 2025. What's more, the Ultrasound Requirement was originally intended to be codified at W.S. §§ 35-6-201—202 but was changed due to conflict with the ASC Law.

an ultrasound before obtaining medication for a chemical abortion.[6] As a part of that process, a physician must allow pregnant women the "opportunity" to view the active ultrasound, and prescribers must "verify" that the ultrasound occurred before dispensing medication. Wyo. Stat. Ann. § 35-6-301. Also subsumed within the law is a waiting period provision, requiring pregnant women to wait two days (48 hours) from the time of their ultrasound before obtaining drugs for a chemical abortion. *Id.* In pertinent part, the law provides:

> (b) Not less than forty-eight (48) hours before a pregnant woman procures the drugs or substances for a chemical abortion or before a health care provider dispenses the drugs or substances necessary for a chemical abortion, whichever is earlier, the pregnant woman shall receive an ultrasound in order to provide the pregnant woman the opportunity to view the active ultrasound of the unborn baby and view the fetal heart motion or hear the heartbeat of the unborn baby if the heartbeat is audible.
>
> (c) The ultrasound required under subsection (b) of this section shall be of a quality consistent with standard medical practice in the community.
>
> (d) Upon providing an ultrasound under this section, the provider of the ultrasound shall provide the pregnant woman with a document that specifies:
>
> (i) The date, time and place of the ultrasound;
>
> (ii) The health care provider who ordered or requested the ultrasound;
>
> (iii) The health care provider who performed the ultrasound;
>
> (iv) Confirmation of intrauterine pregnancy and the gestational age of the unborn baby.
>
> (e) Before a health care provider dispenses the drugs or substances necessary for a chemical abortion to a pregnant woman, the health care provider shall verify that the ultrasound required by this section occurred.

[6]A chemical abortion is defined as "the use of any medication, drug, substance or combination thereof that is prescribed or administered for the purpose of terminating a pregnancy once the pregnancy can be confirmed through conventional medical testing. . ." Wyo. Stat. Ann. § 35-6-201(a)(ii).

(f) Except as otherwise provided in this subsection, any person who violates this section shall be guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine not to exceed nine thousand dollars ($9,000.00), or both. Nothing in this section shall be construed to subject a pregnant woman to any criminal penalty under this subsection.

Wyo. Stat. Ann. § 35-6-301.

IV. HB 164/ W.S. §§ 33-1-402—403/ "Off-Label Law"

HB 165 ("Off-Label Law") generally declares "lawful" a prescriber's ability to prescribe drugs for off-label indication.[7] Wyo. Stat. Ann. § 33-1-402 (West 2026). However, the allowance is not unlimited; medications used for abortion do not enjoy the same statutory safeguards as most other prescriptions. As described by W.S. §§ 33-1-402—403:

> (a) Notwithstanding any other law, a prescriber may lawfully prescribe a United States food and drug administration approved prescription drug for off-label indication, and a pharmacist is authorized to dispense a prescribed drug for off-label indication within their scope of practice pursuant to a valid prescription order.
>
> (b) This section shall not apply to prescriptions for substances that are:
>
> > (i) Listed as schedule I or schedule II controlled substances under federal law or the Wyoming Controlled Substances Act of 1971;
> >
> > (ii) Intended to transition a minor's biological sex as determined by the sex organs, chromosomes and endogenous profiles of the minor or affirm the minor's perception of the minor's sex if that perception is inconsistent with the minor's biological sex;
> >
> > (iii) Intended to induce an abortion.

[7] Off-label indication is statutorily defined as "drug treatments for conditions other than those stated in the labeling approved by the United States food and drug administration." Wyo. Stat. Ann. § 33-1-401(a)(ii)(West 2026).

33-1-403 Professional Conduct.

(a) Notwithstanding any other law, a prescriber or pharmacist shall not face any adverse action from a health care related licensing board, including disciplinary action, solely on the basis that a prescriber prescribed a United States food and drug administration approved prescription drug for off-label indication pursuant to a valid prescription order pursuant to this article.

(b) Notwithstanding any other law, any recommendation, prescription, use or opinion of a prescriber or pharmacist related to medical treatment that is not regulated by a health related licensing board, the department of health, a professional association or the United States food and drug administration, shall not be considered unprofessional conduct.

V. Procedural History

The Plaintiffs originally filed their *Complaint for Declaratory Judgment and Injunctive Relief* ("*Complaint*") on March 21, 2025, disputing the constitutionality of the ASC Law and the Ultrasound Requirement. More precisely, the Plaintiffs argued that the ASC Law and the Ultrasound Requirement violated several state constitutional provisions—Article I, § 38 (Right to Healthcare Decisions); Article I, §§ 2, 3 and Article III, § 27 (Equal Protection); Article I, § 6 (Due Process of the Law); and Article I, §§ 18 and 19, Article VII, § 12, and Article XXI, § 25 (Establishment of Religion) and sought declaratory judgment as to those determinations and a permanent injunction. Almost immediately after filing the *Complaint*, the Plaintiffs filed their *Motion for Temporary Restraining Order Against Wyoming's Criminal TRAP Laws*. The Court conducted a hearing on the matter on April 8, 2025, and entered its *Order Granting Motion for Preliminary Injunction* on April 21, 2025.

On May 1, 2025, the Plaintiffs filed their *First Amended Complaint for Declaratory Judgment and Injunctive Relief* adding the Off-Label Law to its constitutional challenge. Again,

the Plaintiffs subsequently filed a *Motion for Preliminary Injunction Against Section 402(b)(iii) of HB 164.* A hearing was held on June 23, 2025, and the Court granted that motion on June 30, 2025.

On March 10, 2026, the Plaintiffs again sought to amend the allegations giving rise to this action. Specifically, they sought to add new legislation, HB 126. This law came into effect on March 9, 2026, and generally banned abortions after detection of a fetal heartbeat. After hearing arguments from the parties on March 30, 2026, the Court denied the Plaintiffs' request.

Now, the parties have filed cross motions for summary judgment. The State argues that while both the ASC Law and the Ultrasound Requirement are subject to strict scrutiny, it can demonstrate a compelling interest, justifying the enactments. As for the Off-Label Law, the State argues that the law does not impede a woman's right to make healthcare decisions and is thus subject to a rational basis review, which it survives. Moreover, the State argues that all challenged laws do not violate the right to equal protection; that there is no "fundamental unenumerated right to determine family composition;" and the laws do not disturb an individual's right to freedom of religion.

Plaintiffs assert that *all* the laws are subject to strict scrutiny, which they cannot withstand. Further, the Plaintiffs maintain that the laws are violative of Article I, § 38 of the Wyoming Constitution and the rights of equal protection and establishment of religion. The Court heard argument on the matter on March 19, 2026.

APPLICABLE LEGAL STANDARDS

I. Summary Judgment Standard

The standard required for summary judgment relief is well-established. In accordance with WRCP 56:

> A party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

In reiteration of the Rule, summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Lewis v. Francis*, 2025 WY 109, ¶ 10, 577 P.3d 433, 436 (Wyo. 2025)(citing *Weir v. Expert Training, LLC*, 2022 WY 44, ¶ 15, 507 P.3d 442, 447 (Wyo. 2022)).

If the party moving for summary judgment demonstrates an absence of genuine issues of material fact, "the burden shifts to the party opposing the motion to present evidence showing that a genuine dispute of material fact does exist." *Id.* at ¶ 11. The evidence evaluated on a motion for summary judgment "must be competent and admissible. . ." *Jones v. Schabron*, 2005 WY 65, ¶ 11, 113 P.3d 34, 38 (Wyo. 2005) (quoting *Campbell v. Studer, Inc.*, 970 P.2d 389, 392 (Wyo. 1998)). As here, when the Court is presented with cross motions for summary judgment, it "is required to consider each motion independently, [still] viewing the evidence on each motion in light most favorable to the nonmoving party." *White v. Wheeler*, 2017 WY 146, ¶ 67, 406 P.3d 1241, 1256 (Wyo. 2017).

Materiality of a fact exists when it "would have the effect of establishing or refuting an essential element of the cause of action." *Id.* at ¶ 14 (quoting *The Tavern, LLC v. Town of Alpine*, 2017 WY 56, ¶ 46, 395 P.3d 167, 178—79 (Wyo. 2017)). Furthermore, "if multiple reasonable inferences may be drawn from a particular fact, that fact [should not be] the basis for summary judgment"—meaning, if reasonable minds could reach different conclusions and inferences from

the fact, it is best suited for the trier of fact. *Id.* at ¶ 37. The Court considers all evidence before it "[t]o the extent the evidence [is] reliable and relevant to [this] specific [matter]." *Johnson* at ¶ 31.

II. Statutory Interpretation

As this matter calls upon the Court to determine the force, effect, and meaning of statutes, the principles of statutory interpretation are instructive. First, the Court must determine if the statute is clear and unambiguous. *Sinclair Wyoming Refining Company v. Infrassure, Ltd*, 2021 WY 65, ¶¶ 13-14, 486 P.3d 990, 994-95 (Wyo. 2021). In doing so, the Court looks to the plain and ordinary meaning of the words used. *Yeager v. Forbes*, 2003 WY 134, ¶ 13 (Wyo. 2003).

If the statutory provision is clear and unambiguous, the Court must give effect to the plain and ordinary meaning of the statute and avoid providing "judicial adjustment or gloss." *Sinclair*, 2021 WY at ¶¶ 13-14; *see also Yeager*, 2003 WY at ¶ 13 ("When a statute is sufficiently clear and unambiguous, we give effect to the plain and ordinary meaning of the words and do not resort to the rules of statutory construction."). Also, in determining whether a statute is ambiguous, statutes must be read *in pari materia,* and, if possible, construed harmoniously. *See, e.g., id*. This means that the statutory language cannot be considered in a vacuum but must be viewed in proper context and considering the provision's position in the statutory scheme.

Should the Court identify ambiguity in the statute, it turns next to the rules of construction and may utilize extrinsic aids of interpretation to uncover the drafter's intent. *Johnson* at ¶ 17. The Wyoming Supreme Court has "also recognized that, in some cases, it is appropriate to use extrinsic aids of construction to confirm our interpretation of the plain language of the provision." *Id.* (citing *Solvay Chems., Inc. v. Wyo. Dep't of Revenue*, 2022 WY 122, ¶ 25, 517 P.3d 1121, 1131 (Wyo. 1993)).

> Extrinsic aids of construction consider the mischief that the act was intended to cure, the historical setting surrounding its enactment, the public policy of the state, the conditions of the law and all other prior and contemporaneous facts and circumstances that would enable the court intelligently to determine the intention of the lawmaking body.

Id. (internal citations and quotations omitted).

III. Relevant Constitutional Legal Framework and *Johnson*

When contesting the constitutionality of a statute, generally the moving party bears the burden of proving that the law is unconstitutional. *Id.* at ¶ 13. In those instances, courts should "apply a rational basis test to determine whether the challenger has met this burden." *Id.* Implication of a fundamental right, however, upends that rule.

> [W]here a citizen's fundamental constitutional right ... is involved[,] the strong presumptions in favor of constitutionality are inverted, [and] the burden then is on the governmental entity to justify the validity of the statute, and this Court has a duty to declare legislative enactments invalid if they transgress a constitutional provision.

Id. at ¶ 14 (quoting *Hardison v. State*, 2022 WY 45, ¶ 5, 507 P.3d 36, 39 (Wyo. 2022)(brackets in original).

As recognized in *Johnson*, our State Constitution is unique in the fact that it affords citizens their own protection to make independent health care decisions—Article I, § 38, which provides as follows:

> (a) Each competent adult shall have the right to make his or her own health care decisions. The parent, guardian or legal representative of any other natural person shall have the right to make health care decisions for that person.
>
> (b) Any person may pay, and a health care provider may accept, direct payment for health care without imposition of penalties or fines for doing so.
>
> (c) The legislature may determine reasonable and necessary restrictions on the rights granted under this section to protect the health and general welfare of the people or to accomplish the other purposes set forth in the Wyoming Constitution.

(d) The state of Wyoming shall act to preserve these rights from undue governmental infringement.

Wyo. Const. Art. I, § 38.

The *Johnson* Court endeavored to determine whether the right to make healthcare decisions was fundamental and what level of scrutiny should apply. Ultimately, it concluded that Article I, § 38 of the Wyoming Constitution "explicitly grants Wyoming citizens the right to make personal health care decisions. . . [and] that right is indeed a fundamental one." *Johnson* at ¶ 48. As for the level of scrutiny required:

> Given Article I, § 38(a) confers a fundamental right and the plain language of § 38(c) & (d) embodies strict scrutiny principles, we will apply that test to determine whether the Abortion Laws unduly infringe on women's fundamental right to make health care decisions. Applying strict scrutiny, the Abortion Laws' restrictions on a woman's right to make her own health care decisions will be "reasonable and necessary," as those terms are used in Article 1, § 38(c), if the State establishes they do not unduly infringe on the constitutional right because they are narrowly tailored to achieve a compelling government interest. Wyo. Const. art. 1, § 38(c) & (d).

Id. at ¶ 72.

Here, the parties agree that the ASC Law and Ultrasound Requirement are subject to strict scrutiny;[8] however, the State maintains that the Off-Label Law is not, because it does not impact how a pregnant woman may exercise her fundamental right to decide to terminate her pregnancy. In essence, the State argues that the law, as it stands, holds no impact.

> Because the Life Act has been permanently enjoined, there is not a law or regulation that bans chemical abortions, and individuals do not face criminal liability just for performing an abortion; therefore, there is no liability for which a prescriber could use off-label law as a defense. Thus, the subsection of the off-label law that relates to abortion has no application, and it cannot impact a woman's right to seek an abortion.

[8] "The State recognizes that the [ASC Law] and [Ultrasound Requirement] regulate how a pregnant woman may obtain an elective abortion, thus impacting how a pregnant woman may obtain an elective abortion, thus impacting how a pregnant woman may exercise her fundamental right. . ." State's Memo on Mot. Sum. J. at p. 12.

State's Memo on Mot. Sum. J. at p. 35.

Furthermore, the State argues that use of the word "notwithstanding" in the Off Label Law necessitated inclusion of abortion within the exceptions—avoiding unintentionally legalizing chemical abortion in the future. "Properly interpreted § 33-1-402(b) does not make the act of prescribing specific drugs unlawful solely because they are for off-label indications. Rather, § 33-1-402(b) ensures that § 33-1-402(a) does not make the acts of prescribing drugs lawful solely because they are for off-label prescriptions." *Id.* at 36. This is a strawman argument, and the Court remains unpersuaded.

First, whether the law makes chemical abortions illegal via off-label indication or simply withholds it from legality is a distinction without difference. The application of the law is clear: It protects prescribers who dispense medication for off-label indication *except* in the instances of schedule I and schedule II controlled substances; medications "[i]ntended to transition a minor's biological sex;" and medications "intended to induce an abortion." Wyo. Stat. Ann. § 33-1-402. By lumping abortion in with two other illegal activities, the message and intent are clear, as is the groundwork it laid for future exclusion.[9]

The State highlights the historical context, largely involving the COVID-19 pandemic, and points out that the Off-Label Law is a means of advancing stronger protections for the practice of off-label prescribing. Even if the Court adopted and applied that logic in determining the law's reach,[10] by omitting abortion from those stronger practice protections it necessarily regulates and

[9] W.S. § 35-4-1001 broadly prohibits gender transitioning and reassignment for minors and W.S. § 35-7-1031 criminalizes the use of Schedule I and II substances.

[10] The Off-Label Law is unambiguous; thus, the crux of this Court's consideration does not fall on extrinsic aids and materials. *See Johnson* at ¶ 17.

complicates the ability to obtain off-label indications for the purpose of receiving an abortion. Through its differential treatment of abortion within W.S. § 33-1-402, the Off-Label Law upsets a fundamental right.

As the Plaintiffs aptly note, mifepristone and misoprostol are the most common medications prescribed for a chemical abortion; the combination of which is considered an "off-label indication" for the drugs. Pls. Ex. 2 at ¶ 12; Pl. Ex. 7 at ¶ 25; Pl. Ex. 8 at ¶ 14. The State provides no counterargument to that point. Certainly, when such off-label indications are often utilized but not expressly protected by the statute (where others plainly are), the ability to obtain that specific off-label indication is frustrated.

The State's argument is further attenuated by the current abortion legislative climate in which laws are *often* passed, incentivizing the mechanism of the subsection (b)(iii) of the Off-Label Law.[11] Even so, relying on the passage of other laws presumes that the law has no current effect. The State contends that the Court may be misinterpreting the Off-Label Law, but it finds no room for alternative reading. The law excludes off-label indications for chemical abortion from those that are deemed "lawful[]." While use of the word "notwithstanding" perhaps made it appear necessary for the legislature to include abortion in its list of exceptions, thereby pacifying any future concerns and hypotheticals, it nonetheless carries impact. The very fact that, even upon *Johnson*'s ruling, this issue remains before this Court illustrates some degree of significance and value.

[11] Even at the summary judgment hearing in this matter, a law had come into effect implicating the Off-Label Law. Governor Gordon signed HB 126 into law on March 9, 2026. HB 126 generally bans abortions after detection of a fetal heartbeat; thus, prompting impact of W.S. § 33-1-402(b)(iii). The fact that HB 126 was since preliminarily enjoined does not alter this analysis. Ord. on Mot. Temp. Inj. at 8, *Johnson v. State*, No. 116148 (7th Jud. Dist. Ct., Natrona Cnty., April 24, 2026).

Thus, the Court proceeds in the analysis of all the laws before it under a lens of strict scrutiny. Moving forward with that standard in mind, the Court recalls that "[u]nder a strict scrutiny [standard], the State must first show the statutory restriction on a woman's fundamental right to make her own health care decisions is necessary to achieve a compelling state interest." *Johnson* at ¶ 61.

As to the existence of a compelling interest, it is notable that "[a] compelling government is [an interest] of the highest order." *Id.* at ¶ 81 (quoting *Planned Parenthood of Montana*, 570 P.3d 51, 73). Assertion of an interest is not enough; rather, the State "must substantiate that interest" and "specifically identify an actual problem that needs solving." *Id.* (citing *Operation Save America v. City of Jackson*, 2012 WY 51, ¶ 78, 275 P.3d 438, 461 (Wyo. 2012)). The existence of a problem is only the first step, however. The restrictions must also act as an effective solution. "The method or means of protecting the stated compelling interest must also advance the compelling interest." *Johnson* at ¶ 83 (citing *Students for Fair Admissions, Inc. v. Pres. & Fellows of Harvard Coll.*, 600 U.S. 181, 215—17, 143 S.Ct. 2141, 2167—68, 216 L.Ed.2d (2023)).

The Court must also determine whether the law is properly and narrowly tailored. To accomplish this task, the Court must be wary of laws that could be characterized as either underinclusive or overinclusive. "An overinclusive statute restricts conduct that does not further the compelling state interest. . . A statute is underinclusive if it fails to regulate activities that pose substantially the same threats to the government's purportedly compelling interest as the conduct that the government prohibits." *Id.*

In summary, to survive strict scrutiny, the State bears the burden of demonstrating 1) whether the State has a compelling interest (i.e., "an actual problem"); 2) whether the restrictions

actually accomplish the objective; 3) whether the means of accomplishing the objective are the least restrictive option. *Johnson* at ¶ 73.[12]

LEGAL ANALYSIS

At this stage, the parties do not dispute that declaratory judgment under W.S. § 1-37-103 *et. al.* is the proper vehicle for challenging a law's constitutionality. Indeed, district courts have properly weighed a statute's compliance with the constitution under such claim, and the Court proceeds pursuant to the standards of the Wyoming Declaratory Judgment Act. *See generally Johnson.*

I. *Article I, § 38*

The issue at the forefront of this matter is whether the ASC Law, the Ultrasound Requirement, and the Off-Label Law violate Article I, § 38 of the Wyoming Constitution. In applying strict scrutiny, the Court must first consider whether the statutes advance a compelling state interest, including whether the laws adequately resolve the problem at hand. *Id.* at ¶ 73. On this threshold issue, the laws all fail.

First, the State largely maintains that the ASC Law constitutes a compelling interest because it closes a legal loophole. The State does not provide any authority or evidence demonstrating that consistency of laws forms a compelling government interest. Additionally, assertions regarding the general health and welfare of women are unsubstantiated. Conversely, the Plaintiffs provide evidence and argument indicating that the ASC Law offers no meaningful impact on women's health.

[12] Whether the State holds a genuine compelling interest subsumes both the first and second questions under strict scrutiny. That is, whether there is "an actual problem needing solved." *See Operation Save America*, 2012 WY at ¶¶ 76—80. Thus, when considering the nature and authenticity behind the State's alleged interest, the Court considers the first two prongs of strict scrutiny in tandem.

Second, while the State alleges that the Ultrasound Requirement functions as a means of protecting women from consequences of undiagnosed ectopic pregnancies, it offers no competent evidence that such instances are occurring with any measure of regularity. The Plaintiffs, on the other hand, demonstrate that implementation of the Ultrasound Requirement would not significantly improve women's risk for ectopic pregnancy complications. What's more, the State offers no cogent evidence illustrating that a waiting period is necessary for any purpose. The Plaintiffs, on the other hand, provide proof that a waiting period holds no utility.

Finally, the State does not set forth any compelling interest vindicating the Off-Label Law; rather, it stands firm in its proposition that strict scrutiny should not apply. As the Court already rejected this argument, and the Plaintiffs point out the absence of genuine material fact as to the constitutionality of this law, the Plaintiffs again prevail.

a. ASC Law is Unconstitutional as the State Fails to Demonstrate a Compelling Objective and Whether the Proposed Restrictions Accomplish the Objective[13]

Again, the ASC Law requires that surgical abortion facilities be licensed as ASCs and further mandates that physicians performing surgical abortions acquire admitting privileges at a hospital within ten miles. Wyo. Stat. Ann. §§ 35-6-202(a)(b); 35-6-203(c). Both parties seek summary judgment under Article I, § 38 of the Wyoming Constitution. Because the record, considered in its entirety, shows no genuine dispute of material fact as to how—or even *if*—the ASC Law would improve the conditions of women seeking abortions, summary judgment as to its constitutionality is appropriate.

[13] Pursuant to the directive of the Wyoming Supreme Court, this Court considers each parties' motion separately. *See Wheeler*, 2017 WY at ¶ 67. However, there is an inevitable overlap between the legal and factual issues, and the court discusses the parties' arguments, motions, and responses in unison.

Throughout briefing, the State's compelling interest in enactment of the ASC Law vacillates between dual objectives—closing inconsistencies within existing law and generally ensuring women's health. To quote the State, the ASC Law "is necessary to protect the health and safety of pregnant women seeking surgical abortions by placing surgical abortion facilities under the same regulatory framework that applies to all other surgical facilities in Wyoming." State's Memo. on Mot. Sum. J. at p. 16.

As to the alleged "legal loophole" the State seeks to close, while it draws plenty of parallels regarding the definition of general surgery and surgical abortion and makes comparisons between abortion procedures and other procedures completed at ASCs in Wyoming, it offers no explanation of how or why that qualifies as a "problem" in the constitutional sense. In other words, the State misses a crucial piece of the equation—corroboration. "The State may not simply assert a compelling interest; it must substantiate that interest." *Johnson* at ¶ 81.

The Wyoming Supreme Court is clear; a throughline must exist between the State's alleged interest and evidence of harm in the case record. Consider, for example, the holdings of *Operation Save America*, 2012 WY 51. There, the Wyoming Supreme Court examined whether the issuance of a temporary restraining order precluding an anti-abortion protest group from protesting near an event organized by the Boy Scouts of America violated the protestors' First Amendment rights. Applying strict scrutiny and considering the validity of the asserted compelling interest, the Court noted the lack of connection between the alleged interest and evidence of harm in the record.

> Our concern in the present case is not with the general proposition that protecting youth is a compelling government interest, but is instead with the record. The record contains no evidence concerning the injury or potential injury to children from viewing the images displayed by the [protestors]. . . The affidavit of Lt. Gilliam describes the contact OSA had with youth in the community and describes the materials [protestors] showed to the young audience, but it does not describe how those materials impacted them, or could impact them. In absence of such evidence,

> the government has not made its required showing of an 'actual problem' in need of solving.

Id. at ¶ 78 (quotation marks in original). Amidst its many comparisons and definitions, the State offers no tie between the omission of surgical abortion facilities from the existing ASC structure and any tangible harm. Stated differently, a gap in the laws does not amount to a per se compelling interest.

A similar problem befalls the State's argument regarding the need to safeguard women's health and safety. Of course, it is conceivable that preserving women's health could independently invoke a compelling interest. However, outside of sweeping generalizations, the State again provides no evidence or a causal link of how a surgical abortion facility, operating outside the regulatory framework of an ASC, negatively impacts women's health and welfare.

ASCs are subject to regulation under the Wyoming Department of Health ("DOH"). Wyo. Stat. Ann. § 35-6-202(a). The State sets forth the relevant provisions of Chapter 5 as follows:

- Have policies to ensure that they adhere to the relevant standard of care. [Rules of Dep't of Health, Health Quality, Ch. 5, § 6(a)(iv)]
- Ensure they only treat patients who qualify for treatment at [ASCs], as opposed to patients who require hospitalization. *Id.* § 7.
- Meet specific building and equipment requirements, including sterilization procedures to ensure patient safety. *Id.* §§ 7, 8.
- Follow a "continuity of care" requirement to ensure that surgical patients have appropriate "pre-operative, intra-operative, and post-operative care." *Id.* § 7(a).
- Ensure that all medical staff including physicians are licensed in the State of Wyoming. *Id.* § 6(a)(x)(B); *see also* Wyo. Stat. Ann. § 33-26-301.
- Have "a written transfer agreement with a hospital or all physicians preforming surgery in the [ASC]center shall have admitting privileges at the hospital." *Id.* § 7(g)(iii).

State Memo. on Mot. Sum. J. at p. 18; Rules of Dep't of Health, Health Quality, Ch. 5. Apart from admitting privileges, which the Court addresses below, the State's argument focuses only on

implementation of the ASC's continuity of care and sterilization techniques. To that end, the evidence is entirely nebulous.

First, the State asserts that "[w]ithout any continuity of care or post-operative care requirements, surgical abortion facilities can simply instruct patients to go to an emergency room for treatment if a complication arises during or after a surgical abortion, without any accountability from the physician who performed the surgery." State Memo on Mot. Sum. J. at p. 20. In isolation, this allegation is conclusory, and the State offers no evidence regarding the prevalence of such event. Thus, the Court cannot conclude this concern is justified. Instead, the harm remains speculative.

The State, here again, circles back to assert proof of harm through disparities in the law. "The risk that surgical abortion facilities will engage in such a practice is an actual problem, as evidenced by the fact that Wyoming law already exists to prohibit this practice in all other surgical facilities. . ." *Id.* Under this limited veil of evidence, the Court cannot conclude that continuity of care is a specific, concrete, or actual problem facing Wyoming residents. *See U.S. v. Playboy Entertainment Group, Inc.* 529 U.S. 803, 822 (2000)(describing the "problem" addressed by a compelling interest do be one that is "pervasive").

The State does provide evidence, via its expert, Ingrid Pfanstiel Skop, MD, that "maintaining aseptic or sterile technique is especially critical when working in a contaminated environment such as the vagina to minimize possible sources of infection." State Memo. on Mot. Sum. J. at p. 19; State's Ex. 1, at 69; State's Ex. 2 at ¶ 25.[14] While the Court may accept the general,

[14] It seems the State incorrectly cited its Exhibit 1 and 2. For example, when referencing paragraph numbers, the State cites to its expert's deposition transcript, which does not contain paragraph numbers. Thus, the citations provided by the State for Exhibits 1 and 2 are mismatched. The Court does its best to refer to them correctly throughout its own citations to the record.

intuitive notion that sterile techniques are favorable and the ASC Law apparently incorporates DOH Rules including "sterilization procedures," the State does not explain how the ASC law directly advances "maintaining aseptic or sterile techniques," or what protocol is necessary. In addition, the State's own expert admits that, outside complications (to which there is no evidence regarding rates of occurrence), abortion procedures do not entail exposure of sterile tissue to the external environment. State's. Ex. 1 at 69:19—23. Stated plainly, the State makes no connection or offer to demonstrate that sterile techniques are not ongoing or how ASC regulations would guarantee sterile techniques *specific* to surgical abortion facilities, leaving that assertion underdeveloped.[15]

The State has not met their burden on summary judgment. On the contrary, the Plaintiffs posit evidence indicating that continuity and applicable standards of care are already ensured through other vehicles rendering the ASC Law unnecessary. As Plaintiffs observe, physicians

[15]The State's rationale is further betrayed by their own argument. The law does not apply to providers who practice in private offices, nor does it apply to women seeking non-elective abortions. Wyo. Stat. Ann. §§ 35-6-201(a)(i); 35-6-202(a)(b); Rules, Dep't of Health, Health Quality, Ch. 5 § 4 (March 28, 2003). The State makes no argument and presents no evidence as to why sterile techniques are satisfactory inside a private physician's office but lacking at a surgical abortion facility. While this omission may also demonstrate underinclusive nature of the law, it is nonetheless relevant in framing the State's stated compelling interest in proper context.

> The inquiry of whether the interest (the end) is "important enough"-that is, sufficiently compelling to abridge core constitutional rights-is informed by an examination of the regulation (the means) purportedly addressing that end. A clear indicator of the degree to which an interest is "compelling" is the tightness of the fit between the regulation and the purported interest: where the regulation fails to address significant influences that impact the purported interest, it usually flushes out the fact that the interest does not rise to the level of being "compelling." If an interest is *compelling* enough to justify abridging core constitutional rights, a state will enact regulations that substantially protect that interest from similarly significant threats. As expressed in *White:* "[A] law cannot be regarded as protecting an interest of the highest order, and thus as justifying a restriction upon ... speech, when it leaves appreciable damage to that supposedly vital interest unprohibited."

Republican Party of Minnesota v. White, 416 F.3d 738, 750 (8th Cir. 2005)(citing *Republican Party of Minnesota v. White*, 536 U.S. 765, 780 (2002).

practicing in Wyoming are subject to licensure by the Wyoming Board of Medicine. Wyo. Stat. Ann. §§ 33-26-301(a), 303(a). The Board of Medicine oversees all practicing physicians within the state and may discipline any professionals who practice medicine outside the "applicable standard of care." Wyo. Stat. Ann. § 33-26-402(a)(xxii) The State does not dispute this, instead it seemingly endorses the statutory standard of care:

> [T]he ASC law applies only to 'facilities' that perform surgical abortions. The law does not apply to providers who perform surgical abortions in private officers if those procedures can be performed under the scope of their license. Additional regulations are not necessary for private physicians because Wyoming law and regulations already exist to ensure safety and continuity of care. . .

State Memo. on Mot. Sum. J. at pp. 20—21. To the Plaintiffs' point, those practicing at Wellspring, the only surgical abortion facility in Wyoming, are Wyoming-licensed and subject to the same standards of care derived from W.S. §§ 33-26-402(a)(xxii), 33-26-301(a), 33-26-303(a), 33-26-305(a). Pls. Ex. 1 at ¶ 7; Pls. Ex. 2 at ¶ 3; Pls. Ex. 4 at ¶ 8.

The Plaintiffs also verify the limited efficacy derived from the ASC Law. Most notably, the Plaintiffs provide evidence—a peer reviewed study—signaling no meaningful difference in success rates between those obtaining an abortion from non-ASC and those from ASCs. Pls. Ex. 10 at Attachment N.[16] Additionally, there is an undeniable lack of *any* clinical guidance indicating that surgical abortions should occur in an ASC. To that assertion, the State is silent.[17] Most telling,

[16] Attachment N is a study by Sarah C. Roberts, DrPH titled *Association of Facility Type with Procedural-Related Morbidities and Adverse Events Among Patients Undergoing Induced Abortions*, dated June 26, 2018.

[17] The State addresses ASC regulations and the risks of surgical abortions beginning at page 18 of its *State Defendants' Response to Plaintiffs' Motion for Summary Judgment*. While that discussion is lengthy, the evidence provided again relies on the exclusive fact that surgical abortion facilities exist outside the umbrella of state ASC regulations. The State repeatedly argues that surgical abortion fits within the definition of surgery and describes the frequent turnover of physicians at Wellspring. At one point, the State addresses sterile working environments:

> Plaintiffs [] argue that they should be exempt from [the ASC Law] because 'there is no evidence in the record that suggests that procedural abortion care necessitates a 'sterile operating environment. In support, they assert that surgical abortions do not require incision into sterile tissue that might

that very point is seemingly uncontroverted by the State's own expert. State Ex. 1 at 77:18—21; 90:11—14.

Even while accepting the State's averments that surgery site infections "account for 20% of hospital-wide infections," *Basic Clinical Skills: Sterile Techniques*, Association of Professors of Gynecology and Obstetrics (2017) (available at https://tools.org/basic-clinical-skills/sterile-technique-2017), and evidence of two instances in which women died from uterine perforation and internal bleeding after undergoing abortions, State Ex. 2 at ¶ 97, the State offers no proof, or even an allegation, that the ASC Law would (or how it could) prevent or otherwise remedy these instances. Without evidence countering such claim, there is no problem begging for a solution.

As to admitting privileges, the State seemingly concedes that provision of the ASC Law is unconstitutional, by urging the Court to consider severance. It acknowledges that the admitting privileges' requirement "appears more stringent" as to surgical abortion facilities than other ASCs and reminds this Court of its ability to sever provisions of a statute from the whole. State Memo. on Mot. Sum. J. at p. 22, n7. The Plaintiffs have demonstrated, through a volume of evidence, that the inclusion of admitting privileges does not amount to a compelling interest under constitutional standards. Notably the State's own expert classified the provision as "probably arbitrary." State Ex. 1 at 90:4—6. The State presents no further evidence justifying admitting privileges and,

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> necessitate a sterile operating environment and are typically performed using suction and specialized instruments without incisions or entry into a sterile body cavity. However, there is no evidence that distinguishes surgical abortions from other surgical procedures performed in ASCs. . .

State Resp. to Pls. Mot. Sum. J. at p. 20.

This assertion misses the mark. Comparing abortions to other surgeries does not demonstrate a problem of the highest order. The State makes no further attempt to combat the notion that women receiving surgical abortions from non-ASCs meet no different success in safety rates than those visiting ASCs.

because this Court cannot identify any compelling interest in the totality of the ASC Law, severance is unnecessary.

The State has not met its burden in demonstrating a compelling interest (i.e. actual problem) or proof of efficacy behind the ASC Law in its entirety. The Plaintiffs, on the other hand, have shown that there is a lack of evidence in the record demonstrating that the State has a compelling interest in its invocation of the ASC Law. Based on this finding, the Court need not consider whether the law is narrowly tailored. Therefore, summary judgment on this issue is appropriate.

b. Ultrasound Requirement is Unconstitutional as the State Fails Demonstrating a Compelling Objective and Whether the Proposed Restrictions Accomplish the Objective

The ultrasound requirement obligates pregnant women seeking chemical abortions to receive an ultrasound and undergo a 48-hour waiting period before proceeding with the abortion. While the State surmises that chemical abortions *could potentially* lead to ectopic pregnancy complications due to shared side effects, it offers no evidence demonstrating that such instances have occurred. The single piece of evidence provided by the State supporting its claim is demonstrably irrelevant. Similarly, the State tenders no evidence endorsing the need or efficacy of the law's waiting period. The Plaintiffs have met their burden in establishing that neither the mandated ultrasound nor waiting period serves a constitutionally endorsed purpose.

Here, the State asserts that the Ultrasound Requirement is meant to protect women from the dangers of undiagnosed ectopic pregnancies. "By imposing the ultrasound requirement, the legislature has identified a discrete, actual problem that needs solving concerning chemical abortions—the need to rule out an ectopic pregnancy before providing a pregnant woman with abortion chemicals." State Memo on Mot. for Sum J. at p. 25.

Underpinning that claim, the State asserts that "[e]ctopic pregnancies occur in 2% of pregnancies and the risks posed by undiagnosed ectopic pregnancies are an actual problem that is unique in the context of an elective abortion. . . The evidence shows that the expected side effects of abortion chemicals mimic the symptoms of a ruptured ectopic pregnancy." *Id.* It furthers avers that:

> [A] woman is thirty percent more likely to die from a ruptured ectopic pregnancy while seeking a medical abortion if it remains undiagnosed because she may interpret the warning signs of pain and bleeding as signs the abortion pills are working rather than a sign her life is in danger. . . One scientific study attributed twenty-four deaths in a thirteen-year period to pregnancy woman caused by the failure to rule out ectopic pregnancy before abortion.

State Mem. on Mot. Sum. *J.* at pp. 25—26.

As for the evidence of this statistic, the State cites several portions of its exhibits. Relevant portions are included:[18]

> Q: Are women seeking an abortion more likely to have an ectopic pregnancy than women who are not seeking an abortion?
>
> A: No, they're not.
>
> Q: So all women should have an—so the law should require all women to have an ultrasound to rule out an ectopic pregnancy, all pregnant women. Correct?
>
> A: No.
>
> Q: Why not?
>
> A: Clinical standard of care says that if a woman comes in with bleeding or with unilateral pain, that we do an ultrasound to rule out an ectopic pregnancy. If she has no warning signs of an ectopic, then it's appropriate not to do—if she is totally asymptomatic, it's appropriate not to do an ultrasound. But what we have happening here with these drugs is women who do—the small minority who have an ectopic are being given drugs that cause pain and bleeding. And so—and these

[18] Inexplicably the State cited page 92 of the deposition transcript in support of its proposition that chemical abortions pose unique risks related to ectopic pregnancy, though a review of that page of testimony discusses the varying treatments for ectopic pregnancy and in no way touches upon the overlap between ectopic pregnancies and chemical abortions.

drugs do not treat an ectopic. So the concern—***and this has been published in the peer-reviewed literature***—if that ectopic starts to grow and rupture, the woman may interpret the pain and bleeding that she's having as signs the drugs are working rather than a warning sign that she has an ectopic, which would have caused her to seek care. So, it doesn't treat the ectopic. It delays the diagnosis and it masks the symptoms, which increases the risk to a woman with an ectopic.

****

Q: We're talking about ectopic pregnancies and gestational age. When an ultrasound is medically indicated for those purposes, has it ever occurred in Wyoming that an ultrasound has not been provided?

A: None of us know what's happening in Wyoming, but this law is trying to protect Wyoming and keep it from happening. The peer reviewed literature that looks at no-test abortions, every single one of those published papers documents women taking it past the gestational age when they should and documents missed diagnoses of ectopic pregnancy. So it's happening across the country. It defies reason to think it's happening in 49 states but not happening in Wyoming.

State Ex. 1 at pp. 112—13, 119 (emphasis added).[19]

Next, consider Dr. Skop's expert report, where paragraph 117 provides in full:

Ultrasound is the gold standard for diagnosing or ruling out an ectopic pregnancy. The consequences of a missed diagnosis of ectopic pregnancy are serious, possibly even fatal. Mifepristone and misoprostol will not resolve an ectopic pregnancy because these medications exert their actions on the uterus, allowing the ectopic pregnancy to continue to grow, possibly to the point of tubal rupture, which can lead to catastrophic bleeding and death. *It has been documented that a woman is 30% more likely to die from a ruptured ectopic while seeking a medical abortion if it remains undiagnosed, because she may interpret the warning signs of pain and bleeding as signs the abortion pills are working rather than a sign that her life is in danger*. While ectopic implantations occur in only 2% of pregnancies, they account for many maternal deaths. Half of women with ectopic pregnancies have no risk factors for this serious condition. Even experienced obstetricians usually cannot make this diagnosis without an ultrasound. Thus, providing abortion drugs without first ruling out an ectopic pregnancy by ultrasounds is likely to lead to delayed diagnosis of an ectopic, which may cause women to require more aggressive surficial management like salpingectomy (tubal removal) rather than conservative treatment like methotrexate (injection) of

19 Contextually significant, the second component of the deposition testimony, following the ellipses, relates to the general failure to preform ultrasounds when *medically indicated*, not specific to abortion care.

> salpingostomy (removing the ectopic while sparing the tube) and may even lead to maternal deaths.

State Ex. 2 at ¶ 117 (emphasis added).

Notably, the emphasized portion of the report language is punctuated by a footnote documenting the bases underlying its assertion (Atrash HK, MacKay HT, Hogue CJ, et al. *Ectopic Pregnancy Concurrent with Induced Abortion: Incidence and Mortality.* AM J Obstet Gynecol 1990; 162(3): 726—30). Plaintiffs respond by providing the study in full and demonstrate that this authority is flawed in an irrefutable respect, as the evidence does not support the State's conclusion. Indeed, the study utilizes instances and occurrences of "legal" abortions from 1972-1985. Pls. Supp. Ex. 2 at pp. 726—27. As noted by the Plaintiffs and confirmed by the State's expert, chemical abortions via medication were not FDA-approved until the year 2000. State Ex. 2 at ¶ 20 ("[t]he mifeprex (branded mifepristone) and misoprostal abortion regimen was initially approved in 2000. . .") Thus, properly framed amongst all evidence, this alleged fact is wholly detached from materiality to the Ultrasound Requirement and, thus, is irrelevant.[20]

Contextualizing that evidence significantly degrades the State's position that chemical abortions exhibit increased risk for ectopic pregnancy complications. Rather, the weight of the remainder of evidence regarding the connection between chemical abortions and ectopic pregnancies is almost entirely anecdotal and threadbare. The similarities between ectopic pregnancy symptoms and the side effects of abortion inducing medication, standing alone and without further corroboration, does not amount to a compelling interest.[21] The fear or conceivable

[20] It bears emphasis that the State did not, by formal reply, respond to the Plaintiffs' attack on this evidence.

[21] The State also notes that "the fact that some pregnant woman in Wyoming live far away from a medical establishment heightens the need for the [Ultrasound Requirement]" and cites additional evidence. That contention rests on the validity that chemical abortions are more susceptible to ectopic pregnancy complications, which was not adequately demonstrated.

potential for harm does not in and of itself make a problem the State must solve by abridging fundamental rights. Speculation of harm does not establish a compelling state interest. *Consol. Edison Co. of New York, Inc. v. Pub. Serv. Comm'n of New York,* 447 U.S. 530, 543, 100 S.Ct. 2326, 65 L.Ed.2d 319 (1980); *see also Awad v. Ziriax*, 670 F.3d 1111, 1129–30 (10th Cir. 2012); *Turner Broadcasting Sys., Inc. v. FCC,* 512 U.S. 622, 644, 114 S.Ct. 2445, 129 L.Ed.2d 497 (1994) (plurality) ("[The government] must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way."). The evidence here is too attenuated and suppositional to evade summary judgment.

As for the waiting period, the State claims it holds a compelling interest in "assist[ing] a pregnant woman with the decision-making process, specifically to ensure that she has time to consider the accuracy of the ultrasound and whether she wishes to seek a second opinion on the intrauterine status of her pregnancy." State Memo on Mot. Sum. J. at p. 28. The State makes no effort, however, to verify that allegation. There is no justification reconciling the duration of the wait period, tangible data demonstrating favorable results for those after imposition of a waiting period, or even evidence demonstrating that pregnant women seeking abortions exhibit impulsivity that needs addressed.

In fact, the State cites *no* empirical evidence regarding the propriety of a waiting period. Instead, it primarily relies on two United States Supreme Court Cases. First, the State cites *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). While later overruled by *Dobbs*, the *Casey* Court famously abandoned the use of strict scrutiny, instead focusing on whether the regulations were an "undue burden" on women seeking an abortion. *Id.* Of course,

that is not the operative framework under *Johnson*, nor is the Court convinced the Ultrasound Requirement with withstand a review under *Casey.*

Second, the State alleges that *Hodgson v. Minnesota*, 497 U.S. 417 (1990), stands for the premises that a "brief waiting period relates directly to a pregnant woman's ability to inquire into the competency of the health care provider who confirmed the intrauterine pregnancy and ultimately strengthens the decision making process." State Memo on Mot. Sum. J. at p. 28. In actuality, *Hodgson* recognized the compelling interest in aiding a *minor* through the consultation and support of their guardian.

> We think it is clear that a requirement that a minor wait 48 hours after notifying a single parent of her intention to get an abortion would reasonably further the legitimate state interest in ensuring that the minor's decision is knowing and intelligent. We have held that when a parent or another person has assumed primary responsibility for a minor's well-being, the State may properly enact laws designed to aid discharge of that responsibility. To the extent that subdivision 2 of the Minnesota statute requires notification of only one parent, it does just that. The brief waiting period provides the parent the opportunity to consult with his or her spouse and a family physician, and it permits the parent to inquire into the competency of the doctor performing the abortion, discuss the religious or moral implications of the abortion decision, and provide the daughter needed guidance and counsel in evaluating the impact of the decision on her future.

Id. at 447—48. This same rationale is patently inapplicable here, outside the confines of minor-parent relationship. Neither of these cases present binding precedent nor do they circumvent the State's need to provide evidence validating its position.

On the other hand, the Plaintiffs meet their burden by setting forth ample evidence that the Ultrasound Requirement is unsupported by a compelling government interest. The Plaintiffs provide concise evidence undermining the medical necessity of an ultrasound prior to undergoing a chemical abortion. Pls. Ex. 10 at Attachment H, M, K.

The Plaintiffs request for relief is underscored by their evidence that abortion is inherently safe. They provide Wyoming Department of Health data indicating zero complications or deaths resulting from abortion in Wyoming. Pls. Ex. 10, Attachment O; Pls. Ex. 4 at ¶ 35. They also specifically cite clinical guidance explicitly proclaiming that ultrasounds are not medically necessary for women seeking chemical abortions. Pls. Ex. 10, Attachment M. The State *does* submit some evidence calling into question the dangers of abortion. State Ex. 2 at ¶¶ 15, 18, 27. Where the State fails, however, is providing any evidence linking the ultrasound requirement to better outcomes for women undergoing chemical abortions.[22] Again, the State cannot rebut the constitutional deficiencies of the laws at issue.

c. The State Presents no Objective Evidence Justifying the Off-Label Law

As mentioned earlier, the State adamantly disputes that the Off-Label law is subject to strict scrutiny. Accordingly, its argument did not strive to meet such a standard. Even when responding to the Plaintiffs' own request for summary judgment, the State presented no rebuttal evidence; instead arguing the Off-Label law "served its objective." State Resp. to Pls. Mot. Sum. J. at p. 28. Therefore, the law fails on its face. The Plaintiffs demonstrate an absence of a sincere compelling government interest. Thus, there is no genuine dispute of material fact—the Off-Label law is unconstitutional under Article I, § 38.[23]

As to issues of constitutionality, the absence of a compelling interest is dispositive. To put it another way, when the Court determines that the laws are not driven by a bona fide compelling

[22] The Court must note that the State universally disputes the credibility of clinical guidance proffered by the Plaintiffs, characterizing it as an opportunity for pro-abortion advocacy. Nonetheless, the State bears the burden in demonstrating a compelling interest, and it provides no genuine data disputing the Plaintiffs'. Other than to suggest ill motive, the State does not explain *why* the guidance fails.

[23] These findings and order relate only to the provision of the Off-Label Law relating to abortion—specifically, W.S. § 33-1-402(b)(iii). The remainder of the law remains intact.

interest, it need not consider whether the law is narrowly tailored. Because in these instances, the Court agrees with the Plaintiffs' characterization that these laws "are solutions in need of a problem," it need not go further and consider whether the laws are overinclusive or underinclusive. Similarly, the Court need not address the alternative grounds of constitutional challenges.

II. *A Permanent Injunction is Proper*

The Court has determined that the ASC Law, the Ultrasound Requirement, and the Off-Label Law are unconstitutional pursuant to Art. I, § 38 of the Wyoming Constitution. Next, it considers the propriety of a permanent injunction in this matter. Injunctions are appropriate "when the threatened harm is irreparable and there is no adequate remedy at law." *The Tavern, LLC v. Town of Alpine*, 2017 WY 56, ¶ 36, 395 P.3d 167, 177 (Wyo. 2017).

As noted by the Plaintiffs and echoed in this Court's previous holdings, withholding constitutional rights constitutes per se irreparable harm. "What makes an injury 'irreparable' is the inadequacy of, and the difficulty in calculating, a monetary remedy after a full trial. Any deprivation of a constitutional right fits that bill." *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 806 (10th Cir. 2019)(internal citations omitted).

Per *Johnson*, Article I, § 38 of the Wyoming Constitution guarantees women the right to make her own healthcare decisions, including the decision to obtain an abortion. *Johnson* at ¶ 108. Laws curtailing that right are irreparable in nature. The State does not address or otherwise contest that the laws, if unconstitutional, cause irreparable harm.

CONCLUSION

Per the constitutional tenants set forth by *Johnson*: the ASC Law, the Ultrasound Requirement, and the Off-Label Law challenged here all implicate a fundamental right and trigger strict scrutiny. The Plaintiffs prevail in demonstrating that the State has not met its burden in

establishing a compelling government interest. Thus, all three laws are unconstitutional. Furthermore, in light of the implication of constitutional rights, the Court finds that the Plaintiffs will face irreparable harm without an injunction.

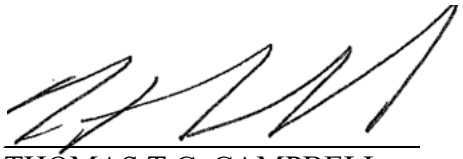
IT IS THEREFORE ORDERED that the State's Motion for Summary Judgment is **DENIED.**

IT IS FURTHER ORDERED that the Plaintiffs' Motion for Summary Judgment is **GRANTED.**

IT IS FURTHER ORDERED that the ASC Law, the Ultrasound Requirement, and subsection (b)(iii) of the Off Label Law are declared unconstitutional.

IT IS FURTHER ORDERED that the Court **ENJOINS AND RESTRAINS** Defendants, their officers, employees, servants, agents, attorneys, appointees, successors, or any persons who are in active concert or participation with the Defendants from enforcing the ASC Law, as enacted at W.S. §§ 35-6-201—204, the Ultrasound Requirement, as enacted at W.S. §§ 35-6-301—302, and Off-Label Law, as enacted at W.S. § 33-1-402(b)(iii).

Dated this 12th day of June 2026.



THOMAS T.C. CAMPBELL
DISTRICT JUDGE RETIRED